Communications During Competitive Sourcing

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Overall Goals and Trade-offs:

- To protect the integrity and fairness of the A-76 and the procurement processes, while allowing for the differences between the MEO and private offerors.
- To provide all parties enough information to insure meaningful, compliant offers can be prepared.
- To insure the function under study continues to operate as efficiently as possible during the process.

Categories of Information

- Information needed to submit an offer
  - Performance Work Statement (PWS)
  - Description of duties currently performed by government personnel
  - Workload Data
- Information related to the formulation of the Most Efficient Organization (MEO) by the in-house workforce
  - Government Personnel Related Information
    - TDA
    - Organization chart etc.

Performance Work Statement (PWS)

- AR 5-20, paragraph 4-7- “The PWS will describe all functional and performance requirements of the the work, the units of work, the quantity of work units, and the quality and timeliness of the work units.”
- PWS should tell what work needs to be done without prescribing how it should be done. It should state the government's minimum needs and avoid requirements that restrict or limit competition.

PWS (continued)

- Indicates what, if any, government facilities and equipment will be available for contractor use.
- Contains Workload Data
- Contains a description of required services
- May have a “key personnel” requirement (probably not advisable)
  - Note: GAO has held MEO must also meet all requirements of PWS.

Management Study

- Reviews all positions in the current government organization, including commercial, GIN and overhead.
- Attempts to create an efficient organization that will compete with private sector offers.
- End result of management study should be Management Plan, which is certified as reflecting the Most Efficient Organization (MEO)

Implementing the MEO Prior to Completion of the Study

- Can we take advantage of known efficiencies prior to completion of A-76 review without compromising the process?
- Army guidance says this is allowable- If we don’t do it, aren’t we wasting resources.
- Goal- Find a way to correct inefficiencies without compromising the competition.

Safeguarding the MEO

- Management Plan and MEO are considered “procurement sensitive” until a tentative decision is reached (bid opening and completion of the cost comparison form).
- Sealed Management Plan, MEO and in-house cost estimate are given to contracting officer prior to the date for receipt of technical proposals. Deadline for receipt of contract offers will be extended until the MEO and the in-house cost estimate are sealed.

Releaseabiltiy of Miscellaneous Materials

- While MEO itself and Management Plan are “procurement sensitive”, how do we treat backup information used to put together MEO, and Management Plan and other information needed to adequately describe requirements under PWS?
- Agency must make trade-off between releasing enough information to insure that private sector is able to formulate a responsive offer and being fair to the Government work force.

Freedom of Information Act and A-76 Data

- In an A-76 environment, the agency may delay release until after bid opening and award, under Exemption 5 of FOIA, of any information which could chill competition and place the agency at a competitive disadvantage in preparing its MEO and in-house offer. (Morrison-Knudsen Co. Inc. v. Dept. of the Army of the US, 595 F. Supp. 352 (1984).

Criteria for Withholding Information- I

- Is the Government's interest on releasing information outweighed by the potential harm that will be done to the integrity and fairness of the A-76 and procurement processes by premature release?
- To make a compelling argument for delaying release, materials in question must have some direct relationship to the specific installation involved.

Criteria for withholding Information-II

- Materials such as an Army-wide database are probably too far removed from a specific study to be withheld and were likely compiled for other reasons.
  - FASCLAS database- Status of current lawsuit.

Conclusions

- These questions will be decided on a case by case basis
- Government must strike a balance between protecting current employees, finding the best way to perform the mission and releasing enough information to provide for meaningful A-76 and procurement processes.
- It is probably impossible to create the perfect “level playing field”.